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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

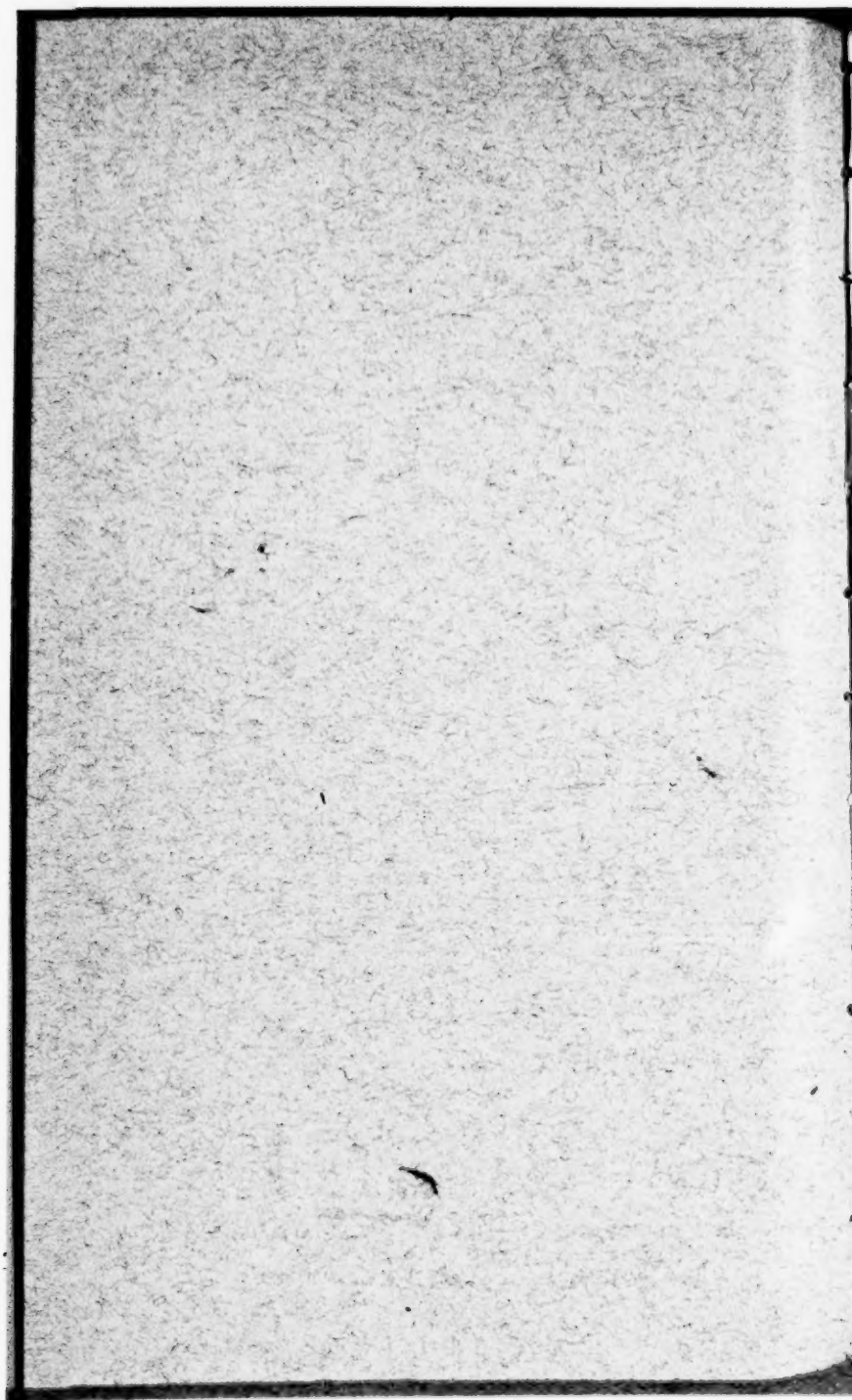
BHAGAT SINGH THIND,
Defendant-Respondent.

No. [REDACTED]

UPON THE CERTIFICATION OF THE UNITED
STATES CIRCUIT COURT OF APPEALS
OF THE UNITED STATES FOR THE
NINTH CIRCUIT TO THE
SUPREME COURT OF
THE UNITED STATES.

Brief of Respondent

THOMAS MANNIX,
Attorney for Respondent.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

BIHAGAT SINGH THIND,
Defendant-Respondent.

No. 3745

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF OREGON.

*Certificate of the United States Circuit Court of
Appeals for the Ninth Circuit of certain ques-
tions of law to the Supreme Court of the United
States, under Section 239, Judicial Code.*

Before: GILBERT HUNT and MORROW,
Circuit Judges.

This cause came to the Circuit Court of Appeals
for the Ninth Circuit upon appeal from the United
States District Court for the District of Oregon,

from a decree and order rendered in that Court on March 28, 1921, dismissing a Bill of Complaint of the United States of America to cancel a Certificate of Citizenship issued to Bhagat Singh Thind in said Court.

Bhagat Singh Thind is a high-caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India. He was naturalized in the District Court of the United States for the District of Oregon on November 18, 1920, over the objection of the United States, which appeared by its Naturalization Examiner. Thereafter the United States filed a Bill in Equity to cancel his Certificate of Citizenship on the ground that it was illegally procured in that the applicant, being a Hindu, is not a white person and not lawfully entitled to naturalization. Thereupon the sufficiency of the bill was attacked and the following order was made in the District Court:

“This cause coming on for hearing on motion of defendant to dismiss plaintiff’s Bill of Complaint, and it appearing that the complaint does not state facts sufficient to justify relief in equity, for the reason that said bill seeks cancellation of defendant’s citizenship on the ground that said defendant is a Hindu, and a native of Punjab, India, and it further appearing that a Hindu is entitled under the laws of the United States to admission to citizenship,

*“It is **THEREFORE ORDERED**, that plaintiff’s bill be and it is hereby dismissed.”*

The questions presented on the appeal are whether a high-caste Hindu, a native of India, of

full Indian blood, born at Amrit Sar, Punjab, India, is a white person within the meaning of Section 2169 Revised Statutes, a question upon which there has been diversity in the Circuit Courts of Appeal and in the District Courts of the United States; and whether such a Hindu, who had lawfully entered the United States prior to the Exclusion Act of February 5, 1917, was thereafter eligible to be naturalized as a citizen of the United States.

The questions of law concerning which the Circuit Court of Appeals for the Ninth Circuit desires instructions from the Supreme Court are:

1. Is a high-caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, a white person within the meaning of Section 2169 Revised Statutes?

2. Does the Act of February 5, 1917 (39 Stat. L. 875, Section 3) disqualify from naturalization as citizens those Hindus, now barred by that Act, who had lawfully entered the United States prior to the passage of said Act?

WILLIAM B. GILBERT,

WILLIAM H. HUNT,

WILLIAM W. MORROW,

Judges of the United States Circuit Court
of Appeals from the Ninth Circuit.

Dated: San Francisco, California, this — day
of October, 1921.

JUDGE WOLVERTON'S OPINION.

For the convenience of the Supreme Court, the opinion of Judge Wolverton, 268 Fed. 683, is set forth herein:

"The applicant is a high-caste Hindu, born in Amritsar, Punjab, in the northwestern part of India. He is 28 years of age, and was admitted into this country on July 4, 1913, at Seattle, Wash. He entered the army, and served therein for six months at Camp Lewis, and was accorded an honorable discharge, his character being designated by the officer granting the discharge as "excellent." He was acting sergeant at the time of his discharge.

The testimony in the case tends to show that, since his entry into this country, the applicant's deportment has been that of a good citizen, attached to the Constitution of the United States, unless it be that his alleged connection with what is known as the Gadhr party or Gadhr Press, a publication put out in San Francisco, and the defendant Bhagwan Singh and others, prosecuted in the federal court in San Francisco for a conspiracy to violate the neutrality laws of this country, has rendered him an undesirable citizen. He was on friendly terms with Bhagwan Singh, Ram Chandra and others who had to do with the Gadhr Press, and, after Bhagwan Singh's conviction, while the latter was on his way to the penitentiary at McNeil Island, met him at Portland, at the depot, and subsequently visited him at the penitentiary three or four times.

He stoutly denies, however, that he was in any way connected with the alleged propaganda of

the Gadhr Press to violate the neutrality laws of this country, or that he was in sympathy with such a course. He frankly admits, nevertheless, that he is an advocate of the principle of India for the Indians, and would like to see India rid of British rule, but not that he favors an armed revolution for the accomplishment of this purpose. Obviously, he has modified somewhat his views on the subject, and now professes a genuine affection for the Constitution, laws, customs, and privileges of this country.

Were his allegiance to the laws and customs of this country dependent upon his protestations alone, I should not be inclined to give them credence. They are, however, strongly corroborated by disinterested citizens, who are most favorably impressed with his deportment, and manifestly believe in his attachment to the principles of this government. I have not attempted to analyze the testimony critically, because of its length, but, from a careful survey of it, I am impressed that his deportment here entitled him to become a citizen, unless it be that he is debarred from citizenship under the naturalization and immigration laws of Congress.

I am not disposed to discuss the question of one of first impression whether a high-class Hindu, coming from Punjab, is ethnologically a white person, within the meaning of Section 2169 of the Revised Statutes, as amended (Comp. St. Sec. 4358). I am content to rest my decision of the question upon a line of cases of which *In re Mohan Singh* (D. C.), 257 Fed. 209, *In re Halladjian*, 174 Fed. 834, and *United States vs. Balsara*, 180 Fed. 694, 103 C. C. A. 660, are

illustrative. I am aware that there are decisions to the contrary, but am impressed that they are not in line with the greater weight of authority.

A crucial question presented is whether the third section of the Immigration Act of Congress of February 5, 1917 (39 Stat. 874, 875 (Comp. St. 1918, Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 4289 $\frac{1}{4}$)), operates as a repeal of Section 2169, R. S., in so far as it embraces the words "white persons." Section 3 excludes Hindus from admission into this country by territorial delimitations. The Act became effective May 1, 1917. Subsequently thereto, it became unlawful for a Hindu to enter the United States, and it may be confidently affirmed that no person who entered the United States unlawfully can be admitted to citizenship therein.

Bhagat Singh did not enter unlawfully. He came at a time when he had a right to enter, and was permitted to enter in pursuance of law. The Act in question does not purport to disturb his present domicile here, nor does it impose any further duty upon him by which he may maintain such a domicile. Neither does it require of him that he shall depart the country. Furthermore, I find nothing in the Act that evinces an intentment that it should operate retrospectively; that is, to render his lawful entry presently unlawful. We may inquire, then, respecting the status of Hindus lawfully domiciled in this country. Shall they remain here as they please, without the privilege of becoming citizens, or shall they be deported whence they came? If the latter, how and when? As to these questions, the law is silent, un-

less Section 2169 and the naturalization laws are still applicable.

Repeals by implication are not favored, and, unless there is manifest repugnancy between the latter and the former act, the former must remain operative. The argument is that, as Congress eliminated the words "white persons" from the Immigration Act, the act in question, it must be inferred that it intended to eliminate these words also from Section 2169, and thus to amend that section accordingly. This does not necessarily follow. Congress was dealing with the subject of immigration, and not naturalization, and it may well be that Congress designed thenceforth to exclude Hindus from entry into the United States, and still permit such as were domiciled here the privilege of being naturalized. In this light, I see no repugnancy between the Act and Section 2169 and other naturalization regulations.

I see no analogy in this Act to the Chinese Exclusion Act. To illustrate, by the sixth section of the Act of May 5, 1892 (27 Stat. 25, Comp. St. Sec. 4320), it was made the duty of Chinese laborers within the limits of the United States at the time of the passage of the Act, and who were entitled to remain therein, to apply to the collector of internal revenue of their respective districts, within one year, for certificates of residence; and it was further provided that any Chinese laborer who neglected or refused to comply with the provisions of the Act, or who, after one year from its passage, was found within the United States without such certificate, should be deemed and adjudged to be unlawfully therein, and should be deported accordingly. This

statute has been sustained, and the courts have held that the United States can forbid aliens coming within their boundaries and expel them from their territory. *Wong Wing v. United States*, 163 U. S. 228, 16 Sup. Ct. 977, 41 L. Ed. 140.

So it has been held that a certificate issued to a Chinese laborer, under the fourth and fifth sections of the Act of May 6, 1882 (22 Stat. 58), as amended July 5, 1884 (28 Stat. 115), conferred upon him no right to return to the United States of which he could not be deprived by a subsequent act of Congress. *Chae Chan Ping v. United States*, 130 U. S. 581, 9 Sup. Ct. 623, 32 L. Ed. 1068. This case is illustrative.

The present Act, however, does not deal with the Hindus and other races without the delimitations other than to debar their further admission into this country. It does not require such as are here to depart, and there being no manifest repugnancy between this and the naturalization laws, it must be concluded that *Bhagat Singh* is entitled to his naturalization."

THE DECENDANTS OF THE ARYANS OF INDIA BELONG TO THE CAUCASIAN RACE.

Section 2169 of the Naturalization Act provides that the provisions thereof "shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent."

It may be assumed that the terms "Caucasian" and "white persons" are synonymous.

In the latter part of the Eighteenth Century Blumenbach divided the human race into five

groups, namely: the Caucasian, the Mongolian, the Ethiopian, the Malay and the American Indian, and while this classification has been the subject of much criticism, it has stood the test of time and amounts to a common-sense, every-day, usable classification. The same rule must apply to the classification of human beings as to any other subject. First, the different types are selected and then around each type is placed the typical group.

In defining the Caucasian race Blumenbach says (See Blumenbach's *Life and Works*, page 265):

"The Europeans, with the exception of the Lapps and the rest of the true Finns and the Western Asiatics this side of the Obi, the Caspian Sea and the Ganges, along with the people of North Africa, are Caucasians—in one word, the inhabitants nearly of the world known to the Ancient Greeks and Romans. They are more or less white in color, with red cheeks, and, according to the European conception of beauty in the countenance and shape of the skull, the most handsome of men."

Again in the same work (pages 265 and 350) Blumenbach classifies Hindus as members of the Caucasian race. It seems that Blumenbach coined the term "Caucasian" from a skull which came from the Caucasus mountains. Blumenbach believed that the natives living around the Caucasus mountains were the highest type of the white race.

Professor Huxley distinguishes four principal types, and he points out the marked physical characteristics of each. These types are the Australioid

(chocolate brown), Negroid (brown black), Mongoloid (yellow) and Xanthochroic (fair whites). To these he adds a fifth variety, the Melanochroic (dark whites). The "fair whites" are the type of the prevalent inhabitants of Northern Europe; and the "dark whites" of Southern Europe. All these physical differences do not exist in the case of each individual, and "innumerable varieties of mankind run into one another by insensible degrees;" but, taking the race or type as a whole, their peculiarities are sufficiently distinct to form the basis of well-recognized classification. Enc. Brit. tit. "Anthropology." Huxley, "Man's Place in Nature," page 372. In re Saito, 62 Fed. 126.

In the Melanochroic (dark whites) Huxley includes the Aryan races of India.

Speaking literally, color alone cannot be the only test of the white or Caucasian race. Strictly speaking, no one is white. The light-haired Swede or German approaches closest to strict whiteness and the dark Portuguese from the Azores or the dark Sicilian come almost within the twilight zone so far as color is concerned. While color is some evidence of race, the true test of race is blood or descent, and this raises the question whether or not the natives of Punjab, Rajputana, Kashmir, United Provinces, Bengal and other provinces of India are of white or Caucasian blood. Of this there seems to be no doubt if we are to take the word of the scientists.

In 1786 Sir William Jones made declaration that similarities between Sanskrit, Greek, Latin,

German and Celtic languages could only be explained on the hypothesis that these languages had a common parentage. Hegel called this the discovery of a new world. (See *Origin of the Aryans* by Isaac Taylor, page 2.)

In 1833—1835 Bopp's Comparative Grammar appeared, in which he classified all the European languages (except Bask, Finnic, Magyar and Turkish) in the same category with the languages of India allied to the Sanskrit. Bopp calls this group of languages Indo-Germanic. Max Mueller in his lectures on science and languages (1861) said:

“There was a time when the first ancestors of the Indians, the Persians, the Greeks, the Romans, the Slavs, the Celts and the Germans were living together within the same enclosures—nay, under the same roof. * * * It follows that before the ancestors of the Indians and Persians started south and the leaders of the Greek, Roman, Celtic, Teutonic and Slavonic colonies marched west, there was a small clan of Aryans settled probably on the highest elevation of Central Asia, speaking a language not yet Sanskrit, or Greek or German, but containing the dialectal germs of all.”

Again, Max Mueller, after maintaining a near kinship of all so-called Aryan languages, asserted that the same blood runs in the veins of the English soldiers as in the veins of the “dark Benagelse,” and has had the courage to assert that “there is not an English jury nowadays which, after examining the hoary documents of language, would reject the

claim of common descent and legitimate relationship between Hindu, Greek and Teuton." (See Max Mueller's *Survey of Languages*, page 29.)

And again Max Muller, in his book *Home of Aryans* (page 48) said:

"I speak, of course, of European nations only, and of those who employ Aryan languages, whether Celtic, Teutonic, Romanic, Slavonic or Greek. The ancestors of these people, nations and languages spent their nursery days together with such apparently heterogeneous races as Hindus, Persians, Armenians and others, far away from their present abodes, according to some, on the high plateau of Asia, according to others in more northern latitudes. But wherever their cradle stood, certain it is that they all carried away from their long-forgotten home their words for father and mother, sister and brother, dog, cow and horse, food and drink—nay, even for that unknown being to whom they addressed their simple prayers. These words are so little changed that even now, if carefully cleaned and placed under the microscope of the scholar, they appear almost identical."

In the *Enc. Brit.*, Vol. 14, p. 487 (*Handy Vol. Issue*), it is stated:

"'Indo-Aryan' is the name generally adopted for those Aryans who entered India and settled there in prehistoric times, and for their descendants. It distinguishes them from the other Aryans who settled in Persia and elsewhere, just as the name 'Aryo-Indian' signifies those inhabitants of India who are Aryans, as

distinguished from other Indian races, Dravidians, Mundas and so on. * * * Most of the Indo-Aryans branched off from the common Aryan stock in the highlands Khokand and Badakshan, and marched south into what is now Eastern Afghanistan. Here some of them settled, while others entered the Punjab by the valley of the River Kabul. This last migration was a gradual process extending over several centuries, and at different epochs different tribes came in, speaking different dialects of the common language. The literary records of the latest times of this invasion show us one Indo-Aryan tribe complaining of the unintelligible speech of another, and even denying to it the right of Aryan-hood. * * * The tribe which spoke this dialect (Aryan) spread east and south, and their habitat, as so extended, between the Punjab and the modern Allahabad and reaching from the Himalaya to the Vindhya Hills in the south, became known to Sanskrit geographers as the Madhyadesa or 'Midland,' also called Aryavarta, or the 'home of the Aryans.' The language spoken here received constant literary culture, and a refined form of its archaic dialect became fixed by the labors of grammarians about the year 300 B. C., receiving the name of Sanskrit or 'purified,' in contradistinction to the folk-speech of the same tract and to the many Indo-Aryan dialects of other parts of India. * * * Sanskrit became the language of religion and polite literature, and thus the Midland, the native land of its mother dialect, became accepted as the true pure home of the Indo-Aryan people.

“Round the Midland, on three sides—west, south and east—lay a country inhabited, even in Vedic times, by other Indo-Aryan tribes. This tract included the modern Punjab, Sind, Gujarat, Rajputana with the country to its east, Oudh and Behar.” (Page 487, Vol. 14; see also Vol. 14, page 495 Enc. Brit.)

Again in Enc. Brit., Vol. 14, page 382, it is stated:

“The census report of 1901 divided the population of India into seven distinct racial types: the Turko-Iranian type, represented by the Baluch, Brahue and Afghans of the Baluchistan agency and the Northwest Frontier Province; the Indo-Aryan type, occupying the Punjab, Rajputana and Kashmir, and having as its characteristic members the Rajputs, Khatris and Jats, etc.”

(NOTE—Bhagat Singh Thind is a native of Amritsar, Punjab, a short distance from the far-famed Lahore; this province being in the north-western part of India, on the frontier in close proximity to Afghanistan and Baluchistan, through which countries the original Aryans in their migration southward passed before entering the Punjab and India and spreading all over its northern parts.)

Peschel in *Races of Men* (Leipsic, 1874) said:

“No one disputes that the Hindu of high caste, whether in Bengal, in Madras, or in Scinde, or any other portion of his own country, is of the same Aryan origin as the old northern inhabitants of Iceland, and that the un-

known primordial ancestors of both must have dwelt in a common home." (Page 20.)

Again he says on page 270:

"The Aryans spread themselves over the Punjab (home of Bhagat Singh Thind) and the plain of the Ganges at the expense of a barbarian aboriginal population, which they excelled in mental endowments and physical beauty."

Keane, in *Man Past and Present*, pages 442 and 443, classifies the Hindus as Aryans. See also page 557, where Professor Keane says:

"Arrested for a time perhaps by the barrier of the Hindu-Kush and Suliman ranges, these wonderful proto-Aryan conquerors burst at last, probably through the Kabul river gorges, on to the plains of India and thereby added another world to the Caucasian domain."

Again, Professor Keane, in his book *The World's Peoples*, page 404, after classifying the Persians as Caucasians, which is a well-known fact, says:

"A large strain of 'blue blood' is conspicuous among the Kashmiri, the Jats, Sikhs, Rajputs, Dards, Siahposh, Kaffirs and others about the northwest frontiers."

(Note that Bhagat Singh Thind is a Sikh, that being the religion of the inhabitants of the Punjab.)

Anderson in his book on the *Peoples of India* (London, 1913), at page 21 says:

"The Indo-Aryan type, with its home in the Punjab (original home of Bhagat Singh Thind), Rajputana and Kashmir, has as its most conspicuous members the Rajputs, Khattris and

Jats. These, in all but color (and even in color they are hardly more dusky than the races 'round the Mediterranean) closely resemble the well-bred European in type. In stature they are tall, their complexion is fair, eyes dark; hair on face plentiful; nose narrow and prominent, but not specially long. One significant peculiarity of this group is that there is little difference in physical character between the upper and lower classes. * * *

Again on page 27 Professor Anderson, who was connected with Cambridge University in England and had spent a great part of his life in India said:

"The theory, then, is that the homogeneous and handsome population of the Punjab (home of Bhagat Singh Thind) and Rajputana represents the almost pure descendants of Aryan settlers, who carried the Indo-European languages now prevailing over Northern India, just as our own emigrants took the English language to America."

And again on page 68 this learned author says:

"We now return to the fascinating story of the spread of the Indo-Aryan languages over the north and west of the peninsula. In the tale, captured from the patient study of words and idioms, and finding only occasional support from legend, and practically none from history, since history had not yet begun to exist, we get a singularly moving and interesting picture of the social existence of vanished tribes of men. We partly know and partly conjecture that there was once a race of men whom we may conveniently call Indo-Europeans who

spoke the parent-speech of the modern languages of Europe, Armenia, Persia and Northern India. Probably the Punjab in very early times was occupied by several immigrations of Indo-European folk, for in the earliest days of which we have any knowledge, the land of the Five Rivers is already the home of many Indo-Aryan tribes who live at enmity with one another, and have a fraternal habit of speaking of one another as unintelligible barbarians."

In the *Enc. Brit.*, Vol. 2, p. 712, it is said:

"Of the stages in the occupation of the Iranian tableland by the Aryan people nothing is known. The people themselves have apparently no tradition of a time when they did not hold these territories (*Spiegel, Arische Periode*, p. 319). Though the Hindus have no tradition of their invasion of India, it is certain that they are not an indigenous people, and if they are not, it is clear they could have come in no other direction save from the other side of the Hindu-Kush. At the period of their earliest literature, which may be assigned to about 1000 B. C., they were still settled in the valley of the Indus and at this time the separation had probably not long taken place, the eastern portion of the stock having pushed their way along the Kabul Valley into the open country of the Indus."

And on page 749 of Vol. 2, *Enc. Brit.*, it is said:

"The Aryans of India are probably the most settled and civilized of all Asiatic races. This type is found in its purest form in the north and northwest."

Thus the proposition is settled that the people residing in many of the states of India, particularly in the north and northwest, including the Punjab, belong to the Aryan race.

The Aryan race is the race which speaks the Aryan language. It has been pointed out by many scholars that identity of language does not necessarily prove identity of blood, for ordinarily anyone can learn a foreign language, especially in these latter days when time and space have been largely annihilated by modern means of communication and intercourse. A negro can learn the English language but that does not change his race. However, this argument has no application to the Aryan of India, for as far back as history goes the Aryans themselves have been the conquering race. No other race superimposed any foreign language upon them. The Aryan language is indigenous to the Aryan of India as well as to the Aryan of Europe.

Of course, if there was any evidence that the Aryans of India had been conquered and the Aryan language forced upon them by a foreign master, then the fact that a part of the people of India speak the Aryan language would not be strong evidence that they were originally of the Aryan race; but there being no evidence whatsoever that the so-called Aryans of India were ever conquered by any other race, then the fact that they speak the Aryan language is very strong evidence that they have sprung from the primordial Aryan race who spoke the primordial Aryan language.

There is considerable dispute among scholars as to whether the primordial Aryans had their home in Europe or in Asia. A great many Germans claim that the original Aryans came from Germany and some of the Italians claim that they lived in Northern Italy, and some of the Celts have also claimed that they came from Celtic countries, but all these claims seem to be contrary to the great weight of authority and sound judgment, as well as tradition and history, for it seems settled, as far as a matter of that kind can be settled, that the primordial Aryans came from some part of Central Asia, probably from Persia, or the headwaters of the Oxus and other rivers in that vicinity.

As to ethnology, the physical features of the Aryans of India are about the same as the modern Englishman or German. They are a tall, long-headed race with distinct European features, and their color on the average is not as dark as the Portuguese or Spanish and is lighter than the Moor. Just why the Aryan of India should be darker than the Aryan of Germany is probably due to environment. Undoubtedly the sun has some effect but it may be the law of natural selection has decreed that dark-skinned people have a better chance of survival in warmer countries, and it probably is that the law of evolution continually operating has selected the Melanchroic type of Caucasian as more adapted for the climate of India. (See Darwin, *Origin of Species*, page 30. Harvard Classics.)

As to the possible argument that there is more or less mixture of blood among the people of India, it must be remembered that India has an area of over 1,800,000 square miles and a population of over 300,000,000, and that there are a great many more distinct races in India than there are in the United States. There are the pure Aryans living in the northern provinces, having been there from time immemorial. In certain provinces of the south there is a large population of the Dravidian race classified by Huxley as Mongoloid, and then in some more of the southern provinces there is a mixture of these Mongoloids with some Indians of Aryan extraction. But there is no "melting pot" in India in the sense that we use the term in the United States.

Anderson says in his *Peoples of India*, page 33, that the high-class Hindu regards the aboriginal Indian Mongoloid in the same manner as the American regards the negro, speaking from a matrimonial standpoint. The caste system prevails in India to a degree unsurpassed elsewhere. "Roughly, a caste is a group of human beings who may not intermarry, or (usually) eat with members of any other caste." (Anderson, *Peoples of India*, p. 35.)

The institutes of Manu declare that Brahma created the four great castes of India—the Brahman, the Kshatriya, the Vaieya and the Sudra. These were briefly the priests, the warriors and gentle folk, the traders and the servile classes of human society. It was most reprehensible for one of a higher caste to marry one of a lower caste. The greatest dis-

grace of that kind was a marriage between a Brahman woman and a Sudra man, the resultant offspring being relegated to the caste of Chandala. The unfortunate Chandala is described as the "lowest of mortals" and is condemned to live outside the village, to clothe himself in the garments of the dead, to eat from broken dishes, to execute criminals and to carry out the corpses of friendless men. (Anderson, *Peoples of India*, p. 39.)

The first three classes, while by no means equal, are yet admitted into one pale. They all partake in certain sacred rights to which peculiar importance is attached throughout the Code and they appear to form the whole community for whose government the laws are framed. The fourth class and the outcasts are no further considered than as they contribute to the advantage of the superior castes. The fourth class, the Sudra, is on very low scale and the penance for killing him is the same as for killing a cat, a frog, a dog, a lizard and various other animals. The Sudra is universally termed the servile class and it is declared that a Sudra, although emancipated by his master, is not released from a state of servitude, for it is added, "of the state which is natural to him, by whom can he be divested?"

In the *Historians' History of the World*, Vol. 2, p. 513, the penalties accruing to those who marry one of a lower caste and the offspring thereof are set forth.

It is obvious from this caste system prevailing in India that there was comparatively a small mix-

ture of blood between the different castes. Marriage in each caste, both by religion and law, was required to be within the caste under the penalty of social ostracism and disgrace. It would be just as disgraceful for a high-class Hindu to marry a member of one of the lower caste as it would be for an American gentleman to marry a member of the negro race, and obviously the offspring is subject to the same social degradation. This caste system has proven a most effective barrier to prevent a mixture of the Aryan with the dark races of India.

Besides the foregoing ethnological and philological aspects, it is a historical fact that the Aryans came to India probably about the year 2000 B. C. and conquered the aborigines. (See *Historians' History of the World*, Vol. 2, p. 475.)

In the *Historians' History of the World*, which book, owing to its authors, is a history of the highest and most unquestioned authority, Vol. 2, page 482, it is stated:

“Turning then to the Hindus, the easternmost branch of the great Indo-Germanic or Aryan race, we find, as was to be expected, the same utter obscurity as to origin that we have seen encompassing all questions of racial beginnings elsewhere. One perhaps is justified, however, in feeling that in the case of the Hindus secure traditions carry us one stage farther back than is the case, for example, with such races as the Egyptians and Chinese. For it is accepted as a clear historic fact that the Aryan race, who came to be at a very early day

—at least 1000 B. C.—the absolutely dominant force practically throughout the vast territory of India, had invaded this territory from the northwest; had come, in short, from that Central-Asiatic center of distribution which we have just spoken of as the long-accepted traditional cradle of the Aryan races. Whether at a still earlier period this migration had its source in more distant lands, including ultimately the Atlantic borders of Europe, is altogether problematical, but that the immediate source of invasion was Central Asia is not to be doubted.

The beginning of this invasion in which the Central-Asiatic Aryan people descended upon the northwestern regions of the land which we now term India, date from a vaguely determined period, which can hardly be more recent than 2000 years B. C. From this beginning the invaders spread farther and farther beyond the Ganges, occupying the great fertile plains of Central India, and ultimately the plateau of the Deccan, and crowding the original inhabitants into out-of-the-way corners of the land till they seem almost exterminated. This extermination of the original or non-Aryan population of India, however, was only relative, as even now there are many millions of their descendants still living in India; but the invaders became so utterly dominant and so enormously preponderant in numbers that the original inhabitants may practically be disregarded in treating of Indian history."

INTREPRETATION OF SECTION 2169 REVISED STATUTES BY THE DIFFERENT FEDERAL COURTS.

District Judge Bledsoe, *In re Mohar Singh*, 257 Fed. 209, admitted a native of India to citizenship on the ground that he was a member of the Caucasian or white race coming within the scope of Section 2169 Revised Statutes. On page 212 this learned judge said:

*“Modern ethnologists use the terms ‘white’ and ‘Caucasian’ synonymously. The preponderance of respectable opinion includes the Hindus of India as members of the Aryan branch or stock of the so-called Caucasian or white race. See report of the Immigration Commission, Senate Document No. 662, 61st Congress, Third Session. I have been cited to no anthropological authorities which include the Hindus in any of the other races of mankind. They belong to the Aryan stock and therefore to the Caucasian or white race, because of certain physical and other peculiarities possessed by them and which indubitably mark their descent. Caucasians are white whether they live under the tropic sun and therefore have a very dark skin or abide in northern climes and possess a light one. The possession of a common racial stamp is the basis of classification. * * * In addition, I am advised by counsel for petitioner herein, and his statement is not challenged by the Government, that Hindus have been admitted to citizenship in the Southern District of Georgia, the Southern District of New York, the Northern District*

of California and the Eastern District of Washington by the courts of the United States and by the Superior Court of California in both San Francisco and Los Angeles. All these precedents are persuasive.

Judge Rudkin, *In re Mozumdar*, 207 Fed. 115, also admitted a native of India to citizenship and this after a most thorough investigation and review of authorities. Judge Rudkin said on page 117:

"But whatever the original intent may have been, it is now settled by the great weight of authority, at least, that it was the intention of Congress to confer the privileges of naturalization upon members of the Caucasian race only. In re Ah Yup, 5 Sawy. 155, Fed. Cas. No. 104; In re Saito (C. C.), 62 Fed. 126; In re Camille (C. C.), 6 Fed. 256; Matter of San C. Po, 7 Misc. Rep. 471, 28 N. Y. Supp. 383; In re Baintaro Keimagai (D. C.), 163 Fed. 922; In re Knight (D. C.), 171 Fed. 297; In re Najour (C. C.), 174 Fed. 735; In re Halladjian (C. C.), 174 Fed. 834; U. S. v. Balsara, 188 Fed. 694; 103 C. C. A. 660. It is likewise true that certain of the natives of India belong to that race, although the line of demarkation between the different castes and classes may be dim and difficult of ascertainment."

In re Halladjian, Circuit Judge Lowell said (174 Fed. 834):

"Notwithstanding the opinion of Professor Ripley and others, both Hebrew History and an approximation to general type, show that the Hebrews are a true race, if a true race can be found widely distributed for many centuries.

Their origin is Asiatic. Yet the United States admits that they do not belong to the Asiatic or yellow race, and that they should be admitted to citizenship. If the aboriginal peoples of Asia are excluded from naturalization as urged by the United States it is hard to find a loop-hole for admitting the Hebrew. Agin, if Hindus are to be expelled from naturalization as contended by the United States because many Englishmen treat them with contempt and call them "niggers" a like argument applies to those who have suffered most cruelly among all men on earth from European hatred and contempt. o o o Currier expressly includes Armenians, as well as Hindus, in the Caucasian race, as distinguished from the Mongolian."

In *United States v. Balsara* (Second Cir.), 180 Fed. 694, Circuit Judge Ward, in the case of a Parsee, said:

"On the other hand, counsel for Basara insist that Congress intended by the words 'free white persons' to confer the privilege of naturalization upon members of the white or Caucasian race only. This we think the right conclusion and the one supported by the great weight of authority. In re Ah Yup, 5 Sawy. 155, Fed. Cas. No. 104; In re Saito (C. C.), 6 Fed. 256; Matter of San C. Po., 7 Misc. Rep. 471, 28 N. Y. Supp. 383; In re Buntaro Kamagai (D. C.), 163 Fed. 922; In re Knight (D. C.), 171 Fed. 297; In re re Najour (C. C.), 174 Fed. 735; In re Haladjian (C. C.), 174 Fed 834."

In *Dow v. United States*, 226 Fed. 145 (Fourth Cir.), involving the naturalization of a Syrian, it is stated in the head-note:

"The term 'white persons,' as used in Rev. St. Sec. 2169 (Naturalization Act, March 26, 1790, c. 3, 1 Stat. 103, as amended by Act Feb. 18, 1875, c. 80, sec. 1, 18 Stat. 318 (Comp. St. 1913, sec. 4358), authorizing the naturalization of aliens being 'free white persons,' is not to be construed according to its import in 1790, and, in view of the course of legislative discussion and enactment, includes a Syrian."

District Judge Newman in Georgia, in the case of *In re Najour*, 174 Fed. 735, naturalized a Syrian on the ground that he was white and a Caucasian.

Judge Wolverton, *In re Ellis*, 179 Fed. 1002, also naturalized a Syrian on the ground that he was a Caucasian or white person. Judge Wolverton said:

"The most reasonable inference would be that the word 'white,' ethnologically speaking, was intended to be applied in its popular sense to denote at least the members of the white or Caucasian race of people."

See also the following cases illustrating the same general principles to the effect that section 2169 giving the right of naturalization to "free white persons" is equivalent to giving the right of naturalization to members of the Caucasian race, whether their original *habitat* was in Europe or Asia:

In-re Saito, 62 Fed. 126; *Sadar Bhagwab Singh*, 246 Fed. 496; *In-re Alverto*, 198 Fed. 688; *In-re Camille*, 6 Fed. 256; *In-re Malari*, 239 Fed. 416; *In-re Mozumdar*, 207 Fed. 115; *In-re Young*, 195 Fed. 645; *In-re Rodriguez*, 81 Fed. 337; *In-re Halladjian*, 174 Fed. 834; *U. S. v. Balsara*, 180 Fed. 694; *In-re Najour*, 174 Fed. 735; *In-re Muddari*, 176 Fed. 465;

In-re Knight, 171 Fed. 299; In-re Kanaka, 6 Utah 266.

The case of Ex-parte Dow, 211 Fed. 486, 213 Fed. 355, holding otherwise was overruled in 226 Fed. 145.

In the aforesaid case the lower court reasoned that section 2169 of the Naturalization Acts so far as it regards "free white persons" must be construed in a geographical sense and that only European Caucasians were eligible for citizenship. The vice of this reasoning is illustrated in all the foregoing cases cited above.

The following facts are admitted with regard to Bhagat Singh Thind in the certificate sent to the Supreme Court of the United States by the Honorable Judges of the Circuit Court of Appeals:

1. Bhagat Singh Thind is a high caste Hindu of full Indian blood, born at Amritsar, Punjab, India. Being a high caste Indian and having no intermixture of Dravidian, or other alien blood, and coming from the Punjab, one of the most northwestern provinces of India, the original home of the Aryan conquerors, unless all the historical, ethnological and philological authorities cited in this brief are disregarded it must be held that Bhagat Singh Thind belongs to the Caucasian or white race. If Bhagat Singh Thind is not a free white person then no Hindu can claim citizenship in this country. His high caste and pure Aryan blood make of him a full-fledged Caucasian according to all the well-reasoned authorities.

This particular Hindu is a high class man in every respect, a veteran of the late war and a volunteer, who received high commendation from his superior officers for his distinguished services. His personal desirability is therefore apparent and as a general proposition a man who fights for the flag should be entitled to come under the flag. His love for America is evidenced by his conduct. To reverse this case would result in the disenfranchisement of a great number of Hindus in all parts of the Pacific Coast and other parts of the United States.

Judge Wolverton, Judge Rudkin and Judge Bledsoe, all under the jurisdiction of the Circuit Court of Appeals for this circuit, have already admitted Hindus to citizenship after an exhaustive study of the subject, and their opinions are entitled to the most respectful consideration.

ACT OF CONGRESS, FEB. 5, 1917

As to the Immigration Act touching Hindus, the Naturalization Act and the Immigration Act relate to two entirely different subjects and for that reason alone there could be no amendment to the Naturalization Act by implication.

These two statutes are not *in pari materia*. Statutes are *in pari materia* which relate to the same subject matter. When statutes are *in pari materia*, they are to be construed together, but when they are not *in pari materia*, they do not relate to the same subject matter and cannot be construed

together. (See Words and Phrases, Vol. 4. page 3478.)

In *United States v. Claflin*, 97 U. S. 546, 24 L. Ed. 1082, it is held that in order to repeal a statute by implication, the subject of the statutes must be the same, and even if the statutes are *in pari materia*, there shall be no repeal in the absence of express words, unless the implication of repeal is necessary.

Wilnot v. Mudge, 103 U. S. 217; 26 L. Ed. 536.

Repeals of statutes by implication are not favored and are never admitted where the former can stand with the new act, but only where there is a positive repugnancy between the statutes, or the latter is plainly intended as a substitute for the former.

U. S. v. 67 Pack, of Dry Goods, 17 How. 85; 15 L. Ed. 54.

Washington v. Miller, 235 U. S. 422; 59 L. Ed. 295.

See also to the same point: *Supervisors v. Lackawanna*, 93 U. S. 619; *Arthur v. Homer*, 96 U. S. 137; *Movins v. Arthur*, 95 U. S. 144.

It is further held that a later act will not be held to repeal a prior act unless there is a positive repugnancy between the provisions of the new law and the old, and even then only to the extent of such repugnancy.

U. S. v. Mathews, 173 U. S. 381; 43 L. Ed. 738.

Section 2169 Revised Statutes reads as follows:

"The provisions of this title shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent."

According to the contention of counsel the act to regulate the immigration of aliens to and the residence of aliens in the United States enacted in 1917 would repeal and amend this act so that it would contain the provision excluding free white persons from the different countries in Asia. Such a contention in the view of the foregoing authorities cannot be sustained.

The Immigration Act prohibits the immigration of idiots, imbeciles, insane persons, drunkards, paupers, vagrants and people suffering from tuberculosis and other diseases and also prohibits the immigration of Asiatics. Let us suppose, for instance, that a person afflicted with tuberculosis came to this country in 1910, or any other year prior to 1917 and applied for naturalization, would the fact that he belonged to a class that could not be admitted into the United States because of the Act of 1917 prevent him from becoming naturalized? The mere statement of the proposition shows its absurdity. There is no provision in the Naturalization Act itself to prevent persons afflicted with tuberculosis, or epilepsy, or even chronic alcoholism, from becoming American citizens, and the fact that this class of persons are precluded from coming into

the United States by the law of 1917 would not prevent persons of these classes from becoming citizens of the United States under the Naturalization Laws, if they came to the United States prior to 1917, and were otherwise qualified.

The same reasoning applies to Hindus. If a Hindu came to the United States prior to 1917 he would at least be in the same category, as far as the Immigration Law is concerned, with a consumptive person. Speaking figuratively he would be afflicted with the disease which might be termed "Hindooism," which disease would keep him out of the country under the law of 1917, but which would not preclude him from becoming a citizen of the United States if he came into the country before that time.

There is nothing in the Immigration Act which in any way impinges upon the Naturalization Act. If Congress had intended to interfere with the citizenship of Hindus, they would have said so. There is no Hindu naturalization exclusion act and we cannot create one by implication merely for the purpose of denying Bhagat Singh citizenship. The Immigration Act of 1917 only affects Hindus who attempt to come to this country after that time. If a Hindu or a consumptive, or a drunkard, or any of the other classes enumerated in the act have attempted to enter the United States since 1917, in violation of the act they may be deported or otherwise punished, as provided by the Act. Any person who comes to the United States in violation of the Immigration

Act of 1917, commits a crime against the United States and obviously could not become a citizen for that reason.

Therefore, the naturalization of aliens who came to the United States prior to 1917 is not affected by the Immigration Act. The purpose of the Immigration Act was prospective and not retroactive. A law cannot be presumed to be retroactive and there is nothing in the Immigration Act which makes it retroactive. In any of the naturalization cases heretofore tried, so far as known, this point has not been raised. We suppose for the reason that it is too plain for argument that neither the Naturalization Act or the Immigration Act in any way interfere with each other, nor is either act affected or modified by the other. It follows from this that Section 2169 is in full force and effect, and if it is in full force and effect the Immigration Statute cannot be considered in connection therewith.

We therefore respectfully petition your Honorable Court for the affirmance of District Judge Wolverton's judgment, granting citizenship to your respondent.

Respectfully submitted,

THOMAS MANNIX,
Attorney for Bhagat Singh Thind.

EXHIBIT "A."

BHAGAT SINGH THIND'S STATEMENT REGARDING HIS RACE.

ANTHROPOLOGY OF RACES.

Camp Lewis, Washington,
Second Company, First Development Battalion,
Depot Brigade,
December 9, 1918.

From: Private Bhagat Singh Thind, Camp Lewis
Washington.

The respondent is a native of India from Amritsar, in the province of Punjab, of the Hindu race. The peoples of Hindustan are divided into four castes—namely, the Brahman or priestly caste, the first or highest caste; the Kshatria or warrior caste; the Vaishas or merchant caste, and the Sudra caste. The three higher castes of India are of the pure Aryan blood. The sense in which we use the word Aryan in India, in the Kshatria sense, is the original people who came from the north and settled in India, the Aryan invaders. That means people of the Caucasian stock who are chiefly distinguished by certain physical characteristics of hair, structure of the body, etc. Any intermarriages in India must necessarily be between members of the same caste; otherwise, the person who goes outside of the caste becomes an outlaw. One who becomes an outlaw can never be reinstated to the Kshatria caste. He and his descendants will remain outside of the Kshatria caste forever.

I am, therefore, a pure Aryan, for which I further suggest the following:

In determining who is eligible to citizenship, the court is governed by the provisions of the revised statutes of the United States, Title XXX, Section 2169 (as amended in 1875), which section reads as follows: "The provisions of this title (naturalization) shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent." Citizenship is a privilege which may be granted to an alien but which cannot be demanded by him as a matter of absolute right.

The phrase "*free white person*" was used in the first naturalization act, entitled "An Act to Establish a Uniform Rule of Naturalization." Approved March 26, 1790 (1 Stat. 192). This Act provided, "That any alien being a free white person may be admitted to become a citizen, etc." The same language was used in sundry later modifications of the law. By Section 7 of the Amendatory Act of 1870, the naturalization laws were extended "to aliens of African descent." The revised statutes of 1873, Sec. 2165-2169, apparently by oversight or mistake, omitted the mention "free white person," thereby extending the Act to include all persons, irrespective of color or race. By the Act of February 18, 1875 (18 Stat. 318), passed "to correct errors and supply omissions in the revised statutes" Section 2169 (*supra*) was amended by again inserting the phrase in question, thus clearly showing, though

in an awkward manner, that the privilege of becoming a naturalized citizen was to be limited to those aliens mentioned, to-wit: "to aliens being *free white* persons and to aliens of African nativity and to persons of African descent."

Under this action of the Act, if the alien be so fortunate as to be of "*African nativity*" or even if he be of "*African descent*," then he is not to be further interrogated concerning his race, color or previous condition of servitude. Who is a person of "*African nativity*" or "*African descent*"? Is a Mongolian born in Africa of "*African nativity*"? If a Mongolian marries a native of Africa, are his descendants persons of "*African descent*"? It seems clear that the negro from Kongo, the brown pirate from the Barbary Coast and the native of Abyssinia—and, in fact, all native Africans and their descendants, by mere accident of birth, are made eligible for citizenship. If, however, the applicant be not thus fortunate in his choice of parents or place of birth, then, no matter how desirable or highly cultured he may be, he must be denied citizenship unless he can prove that he is both "*free*" and "*white*."

The mere fact that I am in the United States petitioning for citizenship conclusively proves that I am "*free*." Should eligibility to citizenship be determined by the color of the applicant's skin or by reference to the race to which he belongs? If the former is the proper test, then where is the color line to be drawn? Must the com-

plexion be "lily white," or if "brunettes" are to be included as well as "blondes," how dark may a brunette be without becoming black?

No human skin is literally white, and the degrees of colorization are innumerable, even in the same family, dependent upon occupation, climatic exposure, etc. The people of Southern Europe, although unquestionably white, are much darker-skinned than the inhabitants of Germany, for example. Since these facts are understood by all, it hardly seems possible that Congress ever intended to make the right of citizenship dependent upon the degree of colorization, to admit one member of a family and exclude another, and to place upon the courts the responsibility of drawing the color line by mere ocular inspection. Citizenship is one of the most sacred gifts of the State and the right thereto should rest upon a firmer foundation.

If the term "white person" refers to race rather than color, or absence of color, then what is the "white" race and of what peoples is it composed? A very slight study of anthropology will convince even the most skeptical person *that there is no clearly-defined "white" race*. Is it to be wondered at, then, if, after reading the naturalization act, the courts have halted and pondered over its meaning and then declared it to be ambiguous, unintelligible and difficult to construe and apply?

The phrase "white person" refers to race rather than to the color of the skin of the individual applicant, and includes all the peoples of the so-called

Caucasian or white race, and the Hindus of the four above-mentioned castes from the northwestern and eastern parts of India, all of which are members of this race according to (a) anthropological and ethnological, (b) philological, (c) lexicographical, and (d) judicial interpretation.

1. Although the decisions mentioned above are by no means uniform, they all seem to be based upon the theory that the phrase "white persons," as used in the Act, does not present a question of color, but one of race. There are two distinct views as to what is the "white" race referred to, which are, perhaps, best presented by quoting from the decisions where the questions are raised:

(1) Sawyer, Circuit Judge: "Words in a statute, other than technical terms, should be taken in their ordinary sense. The words, 'white person,' as well argued by petitioner's counsel, taken in a strictly literal sense, constitute a very indefinite description of a class of persons where none can be said to be literally white, and those called white may be found of every shade from the lightest blonde to the most swarthy brunette. But these words in this country at least, have undoubtedly acquired a well-settled meaning in common popular speech, and they are constantly used in the sense so acquired in the literature of the country, as well as in common parlance. As ordinarily used everywhere in the United States, one would scarcely fail to understand that the party employing the words 'white person'

would intend a person of the Caucasian race." (In re Ah Yup, 1 Fed. Cases, p. 223.)

(2) Lacombe, Circuit Judge: "The phrase 'free white persons' must be taken as used with the same meanings in the various successive statutes in which it appears. There is much force in the argument that Congress which framed the original act for the naturalization of aliens (Act April 14, 1802, c. 28, 2 Stat. 153) intended it to include only white persons belonging to those races whose emigrants had contributed to the building up on this continent of the community of people which declared itself a new nation.

No doubt such interpretation is unscientific, and, it may be, not always easy of application; but there are equally serious objections to accepting the words "white persons" as including all branches of the great race or family known to ethnologists as the Aryan, Indo-European, or Caucasian. To do so will bring in, not only the Parsees, of which race the applicant is a member, and which is probably the purest Aryan type, but also Afghans, Hindus, Arabs, and Berbera." (In re Balsara, 171 Fed. 294.) (The court, however, did admit the applicant, a Parsee, and its decision was affirmed on appeal. U. S. v. Balsara.)

It will be noted that both courts agreed in thinking race, not color, is the line of demarcation. Race is defined in the "Century Dictionary" primarily as: "An ethnical stock; a great division of mankind having in common certain distinguishing

physical peculiarities, and thus a comprehensive class appearing to be derived from a distinct primitive source."

The classification of mankind into various races and subdivisions is based upon obvious, natural and extrinsic differences and is not merely a haphazard arrangement. In the endeavor to properly classify races, the racial characteristics, such as the physical aspect, height and build, the color of the skin, eyes and hair, its texture, structure and arrangement are all taken into consideration. Of these characteristics perhaps the most important is the shape of the skull. In addition to the physical characteristics, language is an important element in determining the stock from which a people spring. There have been many classifications of man, which are as unsatisfactory as the decisions above cited, but which are all based upon more or less undisputable racial characteristics.

Of these classifications, perhaps the best known is that of Blumenbach, made in the year 1775, but first published in 1781. He divides mankind into five races: (1) the Caucasian or white race, (2) the Ethiopian or black race, (3) the Mongolian or yellow race, (4) the Malay or brown race, and (5) the American or red race. The name "Caucasian" was chosen as a race name on the supposition that the skull of a native inhabitant of the South Caucasian Mountains was typical of the most highly developed race.

Culvier reduces the five classes of Blumenbach to three, preserving the Caucasian, Ethiopian and Mongolian, but eliminating the Malay and Indian and including these two cases as subdivisions of the Mongolian. At the present time the classification accepted as the most satisfactory is that of Huxley, who distinguishes four distinct types, viz.: the Australoid (chocolate brown), Negroid (brown black), Mongoloid (yellow) and Xanthoeroic (fair whites), adding also Melanochroic (dark whites). Numerous other classifications might be mentioned, some of which go to extremes by including as typical races what would appear to be merely subdivisions, but these classifications need not be here discussed. Many of these classifications will be found in the "Dictionary of Races and Peoples" (supra).

If the construction be narrowed to limit the right of naturalization to those Europeans who were coming to this country at the time of the adoption of the first naturalization act, as contended by the Government at one time, then since at the time of the adoption of the first act, no immigration was known except that from England, Ireland, Scotland, Wales, Germany, Sweden, France and Holland, it would follow that Russians, Poles, Italians, Greeks, Jews and others would not be eligible to citizenship, and as is stated by Ward, C. D. in *U. S. v. Balsara* (supra), "such construction is absurd." If, then, the meaning of the phrase is to be extended to include those mentioned, it must be on account of the fact that the phrase "white persons" refers to one

of the great racial classifications of mankind, i. e., the so-called Caucasian race.

It would take but very little argument to convince the ordinary person that the "distinguishing physical peculiarities" of the Turks or Tartars (of Mongolian origin) and of the Germans or Swedes (of Caucasian origin) are just as widely separated as are those of the American Indian and the negro. As both are natives of Europe, one must agree with Lowell, Circuit Judge, when he said, "There is no European or white race." (In re Halladjian, a lengthy and well-considered case.)

It may be stated that the term "Caucasian" was not in common use when the first naturalization act was adopted in 1790; it was in common use when that act was amended in 1875 and prior thereto, during the slavery debates in Congress, and, therefore, in any event, by again inserting the phrase "white person," Congress must be held to have intended to include all subdivisions of the race then commonly referred to on the floor of Congress as the white race, to-wit, the Caucasian race.

II. The questions as to what peoples are to be properly included in the so-called Caucasian or white race, has given rise to much discussion and wide differences of opinion. While all writers agree as to the inclusion or exclusion of the extremes, hardly any two agree as to where the line or demarcation should be drawn.

In December, 1910, Senator Dillingham, in behalf of the Federal Immigration Commission, trans-

mitted to Congress a "Dictionary of Races and Peoples," prepared by Dr. Daniel Folkmar. The attention of the naturalization department is called to this work for the reason that it was evidently prepared after a careful and impartial survey of all available authorities, and may be said to reflect the present views of the government on the questions presented. I quote from this work, as follows, the italics, however, being my own:

"Caucasian, Caucasic, European, Eurafrian or white race. The name given by Blumenbach in 1775 to the white race or grand division of mankind as distinguished from the Ethiopian, Mongolian, American and Malay races. The term is now defined more suitably for our purpose in a broader sense by Brinton and Keane, namely, *to include all races, which, although dark in color or aberrant in other directions, are, when considered from all points of view, felt to be more like the white race than like any of the four other races just mentioned.*" (P. 30.)

"Huxley long ago marked out in this field two distinct physical races, the Xanthrocroid and the Melanochroid, or light and dark Caucasians." (P. 17.)

"Thus the dark Gallas of Eastern Africa are included, partly on linguistic grounds, partly because they have the regular features of the Caucasian; the Berbers of Northern Africa because of the markedly blonde and regular features found among them; the dark Hindus and other people of India still more emphatically because of their pos-

sessing an Aryan speech, relating them still more closely to the white race, as well as because of their physical type; and possibly the Polynesians, Indonesians and Ainos of the Pacific, because of their physical characteristics, although in this discussion these will be excluded from the definition." (P. 30.)

"Although the white race would be supposed to be the one best understood, it is really the one about which there is the most fundamental and sometimes violent discussion. The word "Caucasian," for instance, is in nearly as bad repute as "Aryan" at the present time among ethnologists. Yet, as Keane has said of the former term, both words may be preserved with conventional meanings, as are many of the early terms in natural history, although the early ideas associated with their use be discarded. While the word "Caucasian" has reference mainly to physical characters, "Aryan" will be used here as applying strictly to linguistic groupings." (P. 30.)

"The words "Aryan," "Indo-European" and the like are linguistic rather than ethnological." (P. 17.)

"It is safe to divide the Caucasian grand division of mankind on the basis of language into the Aryan, Semitic, Hamite, Caucasian, and Euskari stocks. The last two possess agglutinative languages and are confined to the small areas of the Caucasus Mountains and the Pyrenees." (P. 18.)

"The foregoing quotations indicate that the Fed-

eral Immigration Commission believed that the Hindus were Caucasian Aryans.

Webster's New International Dictionary defines the term Aryan as: "A member of that Caucasian race, one branch of which early occupied the Iranian plateau, while another branch entered India and conquered and amalgamated with the primitive inhabitants of that country: an Indo-Iranian."

"The Indian branch of this colony (Aryan) entered Hindustan as late as 2000—1500 B. C. The earlier Indo-Aryans had undoubtedly retained many pure Aryan traits. They were of medium height, oval faces, handsome regular features, symmetrical in body, the skull dolichocephalic, the complexion brunette but not brown, the eyes hazel, the hair wavy. This is the type of the highest Brahmans today, and throughout all their history they have exercised utmost care to preserve it intact. The institution of castes was undoubtedly established with this object in view." (Races and Peoples: Brinton, p. 69.)

Caste is defined by Webster's New International Dictionary as: (1) a race, stock, or breed of men or animals; (2) one of the hereditary classes into which the society of India is divided. The caste system is fundamental in Hinduism, referring, for its origin at least, to the time of the Aryan invasion of India. Orthodox Hinduism ascribes to the invaders four castes: the Brahman, or priestly; the Kshatriya, warrior or kingly; the Vaisas, mercantile and agricultural; the Sudra, artisan and laboring. . . .

The native name for "caste" signifies "color," and the system seems to have originated in the endeavor of the light-hued Aryans to preserve their racial purity." Some authorities add to the above a fifth caste, known as "Beran Sauker," including therein the mixed Hindu population.

The Hindu who transgressed against the racial and religious requirements by marrying outside of his caste became an outcast, of no particular caste, and not received either by those of his own caste or by those of his wife's. Although in the southern plains of India the caste restrictions were broken down to some extent by contact of the Aryan invaders with the native peoples, unquestionably they were strictly adhered to in the north, east and western part, where the Aryan invaders drove back the natives and took complete possession, to the exclusion of the natives, almost to the same extent that the Caucasian people of this country have taken possession and driven out the native red men.

"So far as India is concerned, internal evidence of the old literature sufficiently proves that the Aryan invaders were white men, and that the high-caste Hindus are what they are by virtue of the Aryan blood which they have inherited. I am unable to discover good grounds for the severity of criticism, in the name of the "anthropologists" with which Professor Max Mueller's assertion that the same blood runs in the veins of the English soldier 'as in the veins of the dark Bengalese,' and that there is 'a legitimate relationship between Hindu,

Greek and Teuton' has been visited. So far as I know anything of anthropology, I should say that these statements may be correct literally, and probably are substantially. I do not know of any good reason for the physical differences between a high-caste Hindu and a Dravidian (native tribe) except the Aryan blood in the veins of the former; and the strength of the infusion is probably quite as great in some Hindus as in some English soldiers." (Man's Place in Nature, by Professor Huxley, pp. 281-282.)

"There is not an English jury nowadays which, after examining the hoary documents of language, would reject the claim of a common descent and a legitimate relationship between Hindu, Greek and Teuton." (Max Mueller, Survey of Languages.)

The mere fact that the aboriginal native peoples of India are not Caucasian does not mean that all of its peoples are to be excluded from that race. The Indians were the natives of this country, and history teaches us that our pioneers and frontiersmen intermarried with the natives, but those who boast of being descended from the first citizens would be surprised if they were told that they were not Caucasians. The Parsees immigrated some 1200 years ago from Persia into India, but Ward, Circuit Judge, in *U. S. v. Balsara* (supra), admitted a member of that race to citizenship. It may be said with equal force that the high-caste Hindus who settled in India some 4000 years ago are as distinct from the

natives of India as the people of this country are from the American Indian.

In many of the decisions, expressions will be found favorable to the conclusion which I have reached. In two cases, *In re Dolla* (supra) and *In re Mozumdar* (supra) the court admitted a Hindu to citizenship. In the latter case, determined by Judge Rudkin of the U. S. District Court for the eastern district of Washington, the court says:

"It is likewise true that certain of the natives of India belong to that race (Caucasian), although the line of demarcation between the different castes and classes may be dim and difficult of ascertainment. The difference between daylight and darkness is apparent to all, but where is the dividing line and where does daylight and darkness begin? So it is with the races of mankind where miscegenation has been in progress for generations. The system of castes had existed in India for upward of twenty centuries and religion and law have done much to maintain that system and to prevent corruption of blood, but experience teaches us that religion and of blood."

This is unquestionably true, but even so, there are certain tests to be applied, which, when taken in connection with the testimony of the applicant, enable the court to determine with a reasonable degree of certainty whether the individual is of the Caucasian race. These are (a) physical characteristics, (b) caste, (c) place of nativity, and (d) language.

(a) Physical characteristics. The high forehead,

tall build, and light color of the high-caste Hindus and other castes allied to them, appear in strong contrast with non-Caucasian races.

(b) Caste. The Hindu of the Brahman and Kshatria caste is more certain of being a pure Caucasian than one of any other caste.

(c) Place of nativity. The Hindu of the Kshatria caste born in the northern part of India is of the old Aryan race or stock.

(d) Language. Language is important to determine the place of nativity and whether or not related to the Aryan group.

Since citizenship is a privilege not to be lightly conferred upon any applicant, the proof offered in support of the application should be clear and convincing, particularly so when hard to verify. Directing the attention of the court, I find that I possess all of the physical characteristics attributed to those of the Aryan Hindus. I am willing and eager to undertake the responsibilities of citizenship, having shown my eagerness by buying Liberty bonds to help carry on America's part in the war and by enlisting in the fighting forces of the country. Therefore, I ask without hesitation for fair consideration of my plea by the court.

Respectfully submitted,

BHAGAT SINGH THIND.